



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley
Director

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Regional Director

July 8, 2003

Richard C. Thoesen
Mayor, Town of Herndon
P.O. Box 427
Herndon, VA 20172

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: VPDES General Permit for Small Municipal Separate Storm Sewer Systems,
Town of Herndon, VAR040060

Dear Mayor Thoesen:

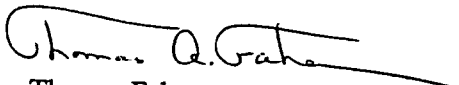
We have reviewed your Registration Statement received on March 11, 2003, and determined that the BMPs and Measurable Goals you proposed for your Storm Water Management Program are acceptable. Therefore, your small municipal separate storm sewer system (small MS4) is hereby covered under the referenced VPDES general permit. The effective date of your coverage is the date of this letter. The enclosed copy of the general permit contains the conditions of coverage, the Storm Water Management Program requirements, and the Annual Reporting requirements.

In accordance with the permit you are required to submit Annual Reports in the 1st, 2nd and 4th years of your permit. Please submit these reports to the below address and on the following dates: August 1, 2004, August 1, 2005 and August 1, 2007.

Department of Environmental Quality
Northern Virginia Regional Office
13901 Crown Court
Woodbridge, VA 22193

DEQ staff would like to meet with the County's representatives to discuss any questions they may have about the general permit and its requirements. Please contact Jeff S. Talbott at (703) 583-3902 or jstalbott@deq.state.va.us to arrange a meeting or any future questions regarding this permit.

Sincerely,


Thomas Faha
Water Permit Manager



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

General Permit No.: VAR040060

Effective Date: December 9, 2002
Expiration Date: December 9, 2007

**GENERAL PERMIT FOR STORM WATER DISCHARGES OF STORM WATER FROM SMALL
MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

**AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE
ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, this permit authorizes operators of small municipal separate storm sewer systems to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board (Board) regulation or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Storm Water Management Program and Part III - Conditions Applicable To All VPDES Permits, as set forth herein.

PART I
DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage Under This Permit.

During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge storm water from the small municipal separate storm sewer system identified in the Registration Statement.

B. Special Conditions.

1. Total Maximum Daily Load (TMDL) Allocations

If a TMDL is approved for any waterbody into which the small MS4 discharges, the Board will review the TMDL to determine whether the TMDL includes requirements for control of storm water discharges. If discharges from the MS4 are not meeting the TMDL allocations, the Board will notify the permittee of that finding and may require that the Storm Water Management Program required in Part II be modified to implement the TMDL within a timeframe consistent with the TMDL. Any such new requirement will constitute a case decision by the Board.

2. Releases of Hazardous Substances or Oil in Excess of Reportable Quantities.

The discharge of hazardous substances or oil in the storm water discharge(s) from the small MS4 shall be prevented or minimized to the maximum extent practicable in accordance with the applicable Storm Water Management Program required in Part II. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2001), 40 CFR Part 117 (2001) or 40 CFR Part 302 (2001) occurs during a 24 hour period, the permittee is required to notify the Department in accordance with the requirements of Part III G as soon as he or she has knowledge of the discharge. In addition, the Storm Water Management Program required under Part II of this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or Section 62.1-44.34:19 of the Code of Virginia.

PART II
STORM WATER MANAGEMENT PROGRAM

A. The permittee must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and the State Water Control Law. The storm water management program must include the minimum control measures described in paragraph B of this Part. For purposes of this Part, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this Part constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." The storm water management program must be developed and implemented within 5 years of the date of coverage under this permit.

B. Minimum control measures

1. Public education and outreach on storm water impacts.

Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

2. Public involvement/participation.

At a minimum, comply with applicable state, tribal, and local public notice requirements when implementing the storm water management program.

3. Illicit discharge detection and elimination.

a. Develop, implement and enforce a program to detect and eliminate illicit discharges, as defined at 9 VAC 25-750-10, into the small MS4.

b. (1) Develop, if not already completed, a storm sewer system map, showing the location of all major outfalls and the names and location of all surface waters that receive discharges from those outfalls;

(2) To the extent allowable under state, tribal or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

(3) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system; and

(4) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

c. The following categories of non-storm water discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the permittee or by the Board as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities.

4. Construction site storm water runoff control.

a. Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of

greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Board waives requirements for storm water discharges associated with small construction activity in accordance with the definition in 9 VAC 25-31-10, the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

- b. The program must include the development and implementation of, at a minimum:
 - (1) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;
 - (2) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - (3) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; or

Procedures to ensure that construction site operators have secured or will secure a VPDES construction permit;

- (4) Procedures for site plan review which incorporate consideration of potential water quality impacts;
 - (5) Procedures for receipt and consideration of information submitted by the public, and
 - (6) Procedures for site inspection and enforcement of control measures.
- c. Track regulated land disturbing activities and submit the following information for the reporting period with the annual report required in Part II E 2:
 - (1) Total number of regulated land disturbing activities; and
 - (2) Total disturbed acreage.

5. Post-construction storm water management in new development and redevelopment.

- a. Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.
- b.
 - (1) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for your community;
 - (2) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state, tribal or local law; and
 - (3) Ensure adequate long-term operation and maintenance by the owner of BMPs.
 - (4) If the MS4 discharges to the Chesapeake Bay watershed, track all permanent BMP's installed in the MS4 (structural and non-structural), and submit the following information with the annual report required in Part II E 2:
 - (a) type of BMP installed;
 - (b) geographic location (Hydrologic Unit Code);
 - (c) waterbody the BMP is discharging into;
 - (d) number of acres treated;
 - (e) whether or not the BMP is inspected or maintained; and
 - (f) how often the BMP is maintained (quarterly, annually, etc.).

6. Pollution prevention/good housekeeping for municipal operations.

Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal

operations. Using training materials that are available from EPA, state, tribe, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

C. Qualifying State, Tribal or Local Program

If an existing qualifying local program requires the implementation of one or more of the minimum control measures of Part II B, the permittee may follow that qualifying program's requirements rather than the requirements of Part II B. A qualifying local program is a local, State or tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of Part II B.

The permittee's storm water management program must identify and fully describe any qualifying local program that will be used to satisfy one or more of the minimum control measures of Part II B.

If the qualifying local program the permittee is using requires the approval of a third party, the program must be fully approved by the third party, or the permittee must be working towards getting full approval. Documentation of the qualifying local program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Part II E 2.

D. Sharing Responsibility

The permittee may rely on another entity to satisfy the VPDES permit obligations to implement a minimum control measure if: (1) the other entity, in fact, implements the control measure; (2) the particular control measure, or component thereof, is at least as stringent as the corresponding VPDES permit requirement; and (3) the other entity agrees to implement the control measure on behalf of the permittee. The agreement between the parties must be documented in writing and retained by the permittee with the Storm Water Management Program for the duration of this permit.

In the annual reports that must be submitted under Part II E 2, the permittee must specify that another entity is being relied on to satisfy some of the permit obligations.

If the permittee is relying on another governmental entity regulated under 9 VAC 25-31-120 to satisfy all of the permit obligations, including the obligation to file periodic reports required by Part II E 2, the permittee must note that fact in the Registration Statement, but is not required to file the periodic reports.

The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).

E. Evaluation and Assessment

1. Evaluation

The permittee must evaluate program compliance, the appropriateness of the identified best management practices, and progress towards achieving the identified measurable goals.

2. Annual Reports

The permittee must submit an annual report to the Director by the first, second and fourth anniversaries of the date of coverage under this permit. The reports must include:

- a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;
- b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
- c. A summary of the storm water activities the permittee plans to undertake during the next reporting cycle;
- d. A change in any identified best management practices or measurable goals for any of the minimum control measures;

- e. Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable), and
- f. The approval status of any qualifying local programs (if appropriate), or the progress towards achieving full approval of these programs.

F. Program Modifications

The Department may require modifications to the Storm Water Management Program as needed to address adverse impacts on receiving water quality caused, or contributed to, by discharges from the MS4. Modifications requested by the Department shall be made in writing and set forth the time schedule to develop and implement the modification. The permittee may propose alternative program modifications and time schedules to meet the objective of the requested modification. The Department retains the authority to require any modifications it determines are necessary.

PART III
CONDITIONS APPLICABLE TO ALL VPDES PERMITS

NOTE: Monitoring is not required for this permit. If you choose to monitor your storm water discharges or BMP's in support of your Storm Water Management Program, you must comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least 3 years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.

C. Reporting Monitoring Results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the Department's regional office.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the Department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to Provide Information.

The permittee shall furnish to the Department, within a reasonable time, any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

E. Compliance Schedule Reports.

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized Discharges.

Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of Unauthorized Discharges.

Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of Unusual or Extraordinary Discharges.

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any

adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of Noncompliance.

The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within 5 days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the Department's Regional Office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

J. Notice of Planned Changes.

1. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (1) After promulgation of standards of performance under Section 306 of Clean Water Act which are applicable to such source; or
- (2) After proposal of standards of performance in accordance with Section 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;

- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
2. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory Requirements.

1. Registration Statement. All registration statements shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes:
 - (1) The chief executive officer of the agency, or
 - (2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
2. Reports, etc. All reports required by permits, and other information requested by the Board shall be signed by a person described in Part III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described in Part III K 1;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
 - c. The written authorization is submitted to the Department.
3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the Department prior to or together with any reports, or information to be signed by an authorized representative.
4. Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to Comply.

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to Reapply.

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a Permit.

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State Law.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper Operation and Maintenance.

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the

operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges.

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to Mitigate.

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to Halt or Reduce Activity not a Defense.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

2. Notice

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least ten days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the Board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The Board may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required in Part III I; and
 - d. The permittee complied with any remedial measures required under Part III S.
3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and Entry.

The permittee shall allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit Actions.

Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the Department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.
2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:
 - a. The current permittee notifies the Department at least 2 days in advance of the proposed transfer of the title to the facility or property;
 - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
 - c. The Board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability.

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.